

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

SAMUEL YOUNG,

Petitioner,

4:22CV3177

vs.

ROB JEFFREYS,

Respondent.

MEMORANDUM AND ORDER

This matter is before the Court on Petitioner's Motion seeking a 45-day extension to comply with this Court's order dated September 5, 2023, due to mail delays at the institution where Petitioner is housed. [Filing No. 30](#). For the reasons set forth below the motion is granted.

Respondent moved for summary judgment (the "Motion"). [Filing No. 15](#). On September 5, 2023, the Court reviewed the Motion and the submissions made by both parties and found the record was insufficient to determine whether Petitioner was able to meet the standard to proceed under the so-called "miscarriage of justice" exception set forth in [Schlup v. Delo](#), 513 U.S. 298, 329 (1995). [Filing No. 26](#). The Court granted Petitioner leave to file a supplemental brief addressing the merits of the miscarriage of justice exception, and gave him through and until October 5, 2023, to comply. [Id. at 3](#).

The September 5 Order was sent to the address on file for Petitioner at the time: the Nebraska Department of Corrections Reception and Treatment Center in Lincoln,

Nebraska, [Filing No. 1](#) at 1, prior to the Court's receipt of Petitioner's updated address on September 18, 2023, [Filing No. 27](#) at 1 (Petitioner states he was released or "jammed" on August 30, 2023, and was sent to the Norfolk Regional Center).¹ Then on September 26, 2023, the Court received notice that the Court's September 5 Order was returned as undeliverable. [Filing No. 28](#). That same day the Court resent a copy of the Order to Petitioner at his new address at the Norfolk Regional Center in Norfolk, Nebraska. *Id.* (docket text notation). The following day on September 27, 2023, the Court extended the deadline for Petitioner to comply with the Court's September 5 Order from October 5 to October 27, 2023. [Filing No. 29](#).

Petitioner, likely unaware of the extension in the September 27 Order, now seeks 45 additional days from the previous October 5, 2023, deadline for compliance with the September 5 Order. In the interest of justice and due to the delays in the receipt of mail Petitioner has experienced the Court shall further extend Petitioner's deadline for compliance.

IT IS THEREFORE ORDERED:

1. Petitioner's Motion seeking an extension to submit his supplemental brief, [Filing No. 30](#), is granted.
2. Petitioner has through and until **November 17, 2023**, to file a supplemental brief in compliance with this Court's September 5, 2023, Order. [Filing No. 26](#).
3. No later than 30 days after Petitioner files his supplemental brief, Respondent shall file and serve a brief in response. In the event that Respondent elects not to file a

¹ By informing the Court of his current place of confinement, Petitioner fulfilled his obligation to keep the Court informed of his current address at all times. See NEGenR 1.3(e) and (g) (requiring pro se parties to adhere to local rules and inform the court of address changes within 30 days).

brief in response, he should inform the Court by filing a notice stating that he will not file a brief and that the merits of the Motion are therefore fully submitted for decision.

4. Petitioner shall submit no other documents unless directed to do so by the Court.

5. The Clerk of the Court is directed to terminate the supplemental briefing deadline set forth in the Court's September 27, 2023, Order, [Filing No. 29](#), and set a prose case management deadline in this case using the following text: **November 17, 2023**: check for Petitioner's supplemental brief.

Dated this 4th day of October, 2023.

BY THE COURT:



Joseph F. Bataillon
Senior United States District Court